



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS, REGION I  
5 POST OFFICE SQUARE, 8<sup>th</sup> FLOOR  
BOSTON, MASSACHUSETTS 02109-3921

April 13, 2021

Dr. Toni Jones  
Superintendent  
By email: toni\_jones@greenwich.k12.ct.us

Re: Complaint No. 01-21-1009  
Greenwich Public Schools

Dear Dr. Jones:

This letter is to advise you of the outcome of the complaint that the U.S. Department of Education (Department), Office for Civil Rights (OCR) received against Greenwich Public Schools (District). The Complainant alleges that the District discriminates against persons on the basis of disability. Specifically, the complaint alleges that the Old Greenwich School (School) is physically inaccessible to persons with mobility impairments because the upper floors are accessible only by stairs. As explained further below, before OCR completed its investigation, the District expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement (Agreement).

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. Section 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in any program or activity receiving federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. Section 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive federal financial assistance from the Department. Because the District receives federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

### **Legal Standards**

The Section 504 regulation, at 34 C.F.R. Section 104.21, provides that no qualified individual with a disability shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in a school district's programs or activities because the district's facilities are inaccessible to or unusable by individuals with disabilities. The Title II regulation, at 28 C.F.R. Section 35.149, contains a similar prohibition for public entities.

The regulations implementing Section 504 and Title II each contain two standards for determining whether a school district's programs, activities, and services are accessible to individuals with disabilities. One standard applies to facilities existing on the date that each

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

regulation was published, while the other standard applies to facilities constructed or altered after those publication dates.<sup>1</sup>

Under the Section 504 regulation, existing facilities are those for which construction began prior to June 4, 1977; under the Title II regulation, existing facilities are those for which construction began prior to January 27, 1992. Facilities constructed or altered on or after these dates are considered newly constructed or altered facilities under Section 504 and Title II standards.

For *existing facilities*, both regulations require a school district to operate each service, program, or activity so that, when viewed in its entirety, it is readily accessible to and usable by individuals with disabilities.<sup>2,3</sup> The school district may comply with this requirement through relocation, alterations/renovations, or any other method that results in making each of its programs, activities, and services accessible to persons with disabilities. In choosing among these methods, a school district must give priority to methods that offer programs, activities, and services to persons with disabilities in the most integrated setting appropriate.

With respect to *newly constructed facilities*, both regulations require that the school district design and construct the facility, or part of the facility, in such a manner that it is readily accessible to and usable by individuals with disabilities.<sup>4</sup> Regarding alterations, both regulations similarly require that, to the maximum extent feasible, the school district alter the facility in such a manner that each altered portion is readily accessible to and usable by individuals with disabilities.<sup>5</sup>

The new construction provisions of the Section 504 and Title II regulations set forth specific architectural accessibility standards for facilities constructed or altered after particular dates. With respect to Section 504 requirements, facilities constructed or altered after June 3, 1977, but prior to January 18, 1991, must comply with the American National Standards Institute (ANSI) Standards (A117.1-1961, re-issued 1971). Facilities constructed or altered after January 17, 1991 must meet the UFAS requirements, although deviations are permitted if they provide substantially equivalent or greater access to and usability of the facility.

Under the Title II regulation, school districts may adopt either UFAS or the 1991 Americans with Disabilities Act Accessibility Guidelines (ADAAG) for facilities constructed or altered after January 26, 1992 and prior to September 15, 2010. For facilities constructed or altered on or after

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<sup>1</sup> At 28 C.F.R. Section 28.151(b)(1) and 34 C.F.R. Section 104.23(b), respectively, the Title II and Section 504 regulation explain that an alteration is a change to a facility or part of a facility that affects or could affect the usability of the facility or part of the facility.

<sup>2</sup> 34 C.F.R. Section 104.22 and 28 C.F.R. Section 35.150.

<sup>3</sup> When determining if a program in an existing facility is usable and accessible, OCR considers the space in which the program is offered, as well as a number of essential features for the building, including but not limited to, entrances, bathrooms, accessible routes, and alarms. OCR uses the Uniform Federal Accessibility Standards (UFAS) as a guide for determining the degree to which certain physical barriers may render the program inaccessible, although strict compliance with UFAS is not required if OCR finds that the covered entity's programs are actually accessible to and usable by persons with disabilities, either because another standard that provides similar access was used, or because programs are relocated to accessible locations as needed.

<sup>4</sup> 34 C.F.R. Section 104.23(a) and 28 C.F.R. Section 35.151(a).

<sup>5</sup> 34 C.F.R. Section 104.23(b) and 28 C.F.R. Section 35.151(b).

September 15, 2010, and before March 15, 2012, the Title II regulation provides that school districts had a choice of complying with either UFAS, ADAAG, or the 2010 ADA Standards for Accessible Design (2010 Standards). The 2010 Standards consist of 28 C.F.R. Section 35.151 and the 2004 ADAAG, at 36 C.F.R. Part 1191, appendices B and D. The Title II regulation provides that school districts must comply with the 2010 Standards for construction or alterations commencing on or after March 15, 2012.

While the Section 504 regulations have not been amended to formally adopt the 2010 Standards, a school district may use the 2010 Standards as an alternative accessibility standard for new construction and alterations pursuant to Section 504.

*Signage.* The Title II regulation, at 28 C.F.R. Section 35.163, requires that covered entities provide signs at all inaccessible facility entrances to direct users to an accessible entrance or a location where they can obtain information about accessible facilities. The regulation further requires that the international symbol of accessibility (ISA) be used at each facility entrance that is designated as accessible (designated entrance).

*Notice.* Both Section 504 and Title II require that covered entities ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by individuals with disabilities.<sup>6</sup>

### **Summary of Preliminary Investigation**

During its investigation to date, OCR reviewed documents provided by the District and interviewed the Complainant as well as District staff. Before OCR completed its investigation, the District expressed a willingness to resolve the complaint. Specifically, the District “acknowledge[d] that [the] School is not up to the ADA code of compliance,” but also provided information on its Feasibility Study Committee (Committee) that “is working to rectify this noncompliance via a large-scale construction project.” As part of its work, the Committee engaged KG+D Architects, an experienced architectural firm, to develop Education Specifications for the project, including plans for accessibility upgrades. The District’s “goal is to have the design for renovation completed by 2022 and to begin construction no later than 2023.”

### **Background**

The School was initially constructed between 1899 and 1902.<sup>7</sup> It has three levels: a ground floor, first floor, and second floor. The School offers a pre-kindergarten through fifth grade educational program, including: academic classrooms for each grade (all three floors); art and music labs (ground floor); cafeteria (ground floor); gymnasium (ground floor); library (first floor); main office suite, which includes the principal’s and nurse’s offices (first floor); science lab (first floor); and specialists’ spaces (all three floors). Despite having multiple floors, the School does not have an elevator, so that the only access among levels is via stairs. OCR has not conducted

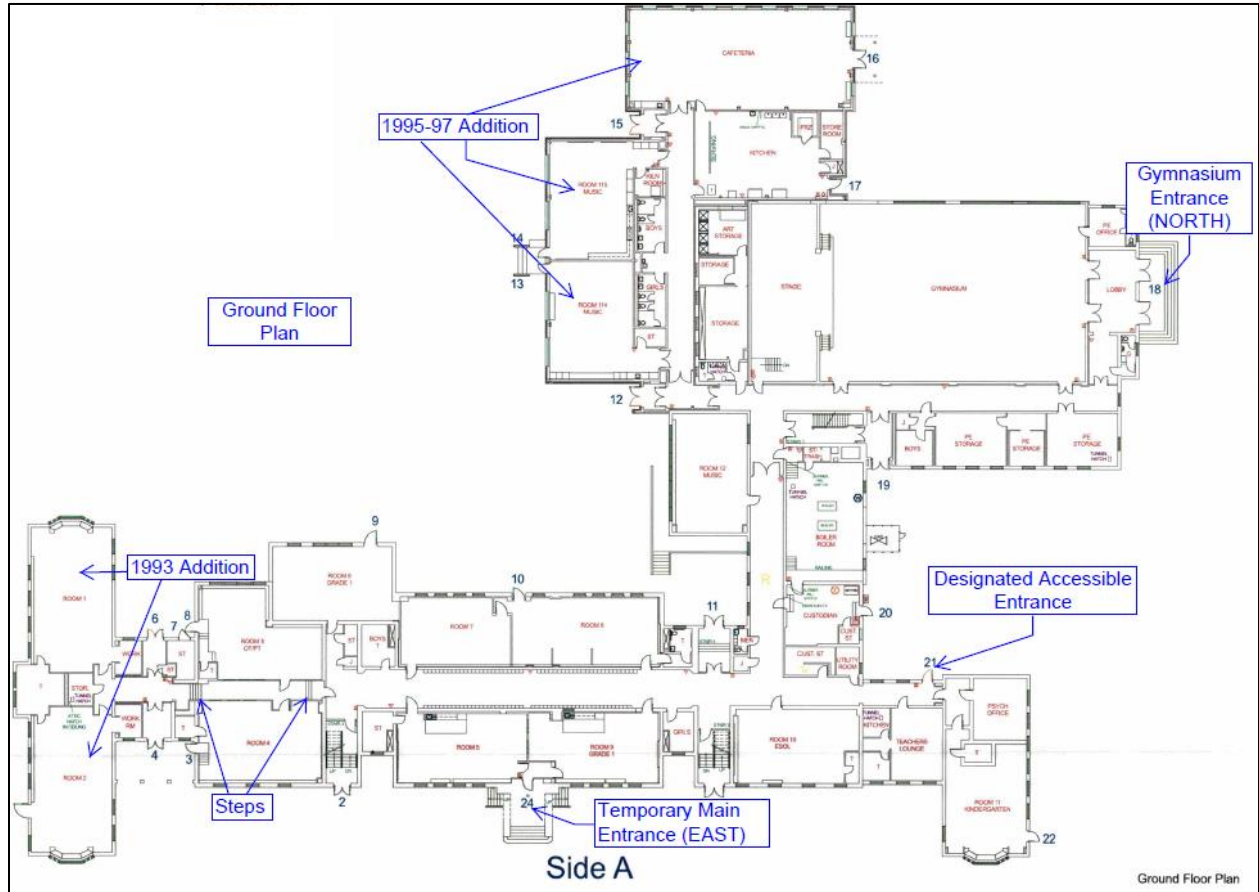
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<sup>6</sup> 34 C.F.R. 104.22(f) and 28 C.F.R. Section 35.163, respectively.

<sup>7</sup> The District made substantial additions to the School between 1945-50, 1956-57, and in 1976.

an onsite to obtain measurements relating to accessibility, thus the below information is based on data and interviews with District staff.

The below figure is a current floor plan of the School’s ground floor provided by the District to OCR. The annotations in blue were made by OCR based on information gathered during the investigation. As shown in the figure, the District made some renovations to the ground floor since the School’s initial construction: in 1993, a multipurpose room was converted into two kindergarten rooms at the south end, and between 1995 and 1997, a cafeteria and two additional rooms were added to the west end.



The School’s main entrance (not pictured above) is located on the first floor of the School’s east side. There is another public entrance on the ground floor of the north side that leads to the gymnasium. Both entrances are accessed by stairs that lead from the sidewalk to the entrance doors. Due to the Covid-19 pandemic, entry via the east side is now achieved by ascending steps to a temporary entrance on the ground floor directly below the traditional main entrance.

The School’s Principal reported that the School’s “main” accessible entrance (designated accessible entrance) is located on the ground floor, adjacent to the mechanical room near the School’s northeast corner. She said that this entrance is at ground level and a wheelchair can be pushed through the door. Due to internal stairways on the ground floor, however, four ground-floor classrooms in the south end of the School cannot be accessed by entering the designated

accessible entrance, including the two added in 1993. The Principal noted that other ground-floor doors that could serve as accessible entrances are generally locked and are not currently equipped with intercoms to request entry. The Principal stated there is no signage on any entrance directing people to an accessible entrance or to where they may find accessibility information.

The District has 11 elementary schools, and the Principal identified two nearby schools (North Mianus and the International School at Dundee) that serve the same grades and provide the same program (i.e., pre-K – 5) as the School. She explained that both have accessible entrances as well as an elevator or internal ramps to allow access to all levels. It is unclear, from OCR’s investigation to date, whether the District has written procedures for handling physical accessibility issues, including those that may require relocating a student to another school. Similarly, it is unclear whether the District provides notice to the public about the inaccessible features of the School or other accessibility information about District facilities.<sup>8</sup>

### Resolution

The District acknowledged the School’s inaccessibility, but also provided evidence that it is in the planning phase of a substantial renovation project to address the accessibility deficiencies at the School.

To complete its investigation, OCR would need to gather additional evidence to fully assess the accessibility of the School (including its prior renovations), whether other schools in the District are accessible and provide the same pre-K – 5 program as the School, and to determine if the District has a policy or practice whereby students may be relocated to accessible schools, and persons with disabilities may request that programs, activities, and services be relocated to an alternate accessible location. Finally, OCR would need additional evidence to determine if the District provides sufficient notice to the public about the inaccessible features of the School or other accessibility information about District facilities.

Prior to the conclusion of OCR’s investigation and pursuant to Section 302 of OCR’s *Case Processing Manual*, the District expressed an interest in resolving this complaint and OCR determined that a voluntary resolution is appropriate. Subsequent discussions between OCR and the District resulted in the District signing the enclosed Agreement which, when fully implemented, will address all of the allegations raised in the complaint. OCR will monitor the District’s implementation of the Agreement.

### Conclusion

This concludes OCR’s investigation of the complaint. This letter should not be interpreted to address the District’s compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR’s determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR’s formal policy statements are approved by a duly

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<sup>8</sup> OCR reviewed the School’s website and did not find any information relating to the accessibility of the School.

authorized OCR official and made available to the public. Complainants may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the District must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

Sincerely,

Meighan A.F. McCrea  
Compliance Team Leader

Enclosure

cc: Abby Wadler, Esq. (*by email*: [abby.wadler@greenwichct.org](mailto:abby.wadler@greenwichct.org))